

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Griffin Sherbert	Team: Squad #7	CCRB Case #: 201801285	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/14/2018 4:00 PM	Location of Incident: [REDACTED]	Precinct: 103	18 Mo. SOL 8/14/2019	EO SOL 8/14/2019	
Date/Time CV Reported Thu, 02/15/2018 2:55 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 02/15/2018 2:55 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			103 PCT
2. POM Joseph Bongiorno	14612	955763	103 PCT
3. POF Jill Ragonese	02957	955963	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Jill Ragonese	Abuse: Police Officer Jill Ragonese arrested § 87(2)(b)	[REDACTED]
B.POM Joseph Bongiorno	Abuse: Police Officer Joseph Bongiorno arrested § 87(2)(b)	[REDACTED]
C.POM Joseph Bongiorno	Force: Police Officer Joseph Bongiorno used physical force against § 87(2)(b)	[REDACTED]
D.POF Jill Ragonese	Force: Police Officer Jill Ragonese used physical force against § 87(2)(b)	[REDACTED]
E. Officers	Force: Officers used physical force against § 87(2)(b)	[REDACTED]

Case Summary

On February 15, 2018, § 87(2)(b) an NYPD School Safety Officer, called the CCRB as a reporting non-witness and filed the following complaint on behalf of her son, § 87(2)(b)

On February 14, 2018, at approximately 4:00 p.m., § 87(2)(b) was talking with some friends at the McDonald's located at 159-01 Jamaica Avenue in Queens, when Police Officer Joseph Bongiorno and Police Officer Jill Ragonese, both of 103rd Precinct, approached him and ordered him to leave. § 87(2)(b) complied, however, he later reentered the McDonald's and was speaking with friends when PO Bongiorno and PO Ragonese approached him and asked for his identification. § 87(2)(b) did not give his identification and began to walk away. § 87(2)(b) alleged that PO Bongiorno grabbed him, and along with group of officers from the 103rd Precinct, handcuffed him, brought him to the ground, and a few officers placed their knees on § 87(2)(b)'s back (**Allegations A and B: Abuse of Authority, § 87(2)(g); Allegations C, D, and E: Force, § 87(2)(g)**).

§ 87(2)(b) provided three cell phone videos (BR06-BR08), captured by witnesses of the incident, who had sent the videos to him. PO Bongiorno and additional responding officers captured portions of the incident with their Body-Worn Cameras ("BWC") (BR09-BR17).

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer Joseph Bongiorno arrested § 87(2)(b)

Allegation B—Abuse of Authority: Police Officer Jill Ragonese arrested § 87(2)(b)

§ 87(2)(b) whose is § 87(2)(b) old, stated that on February 14, 2018, at approximately 4:00 p.m., he entered McDonald's to meet up with some friends after school (BR01). § 87(2)(b) and his friends were talking when he sat on a tabletop where an individual was eating. § 87(2)(b) said he did not realize that anyone was sitting or eating at the table he sat on. Approximately five minutes later, PO Bongiorno and PO Ragonese approached § 87(2)(b) and told him to get off the table and exit the McDonald's. § 87(2)(b) complied.

Standing outside in front of McDonald's, PO Ragonese approached § 87(2)(b) and told him not to reenter the restaurant. § 87(2)(b) began to order food from his cellphone, and then gave his cell phone to his unidentified friend to pick up his food inside. A few moments later, the unidentified friend came back and told § 87(2)(b) he needed to come in and complete his order. § 87(2)(b) reentered, completed his order, and then exited the McDonald's in approximately two minutes.

PO Bongiorno and PO Ragonese approached § 87(2)(b) after he exited and ordered him to produce his identification. § 87(2)(b) refused, reasoning that he had not done anything wrong, and asked the officer why they wanted his identification. The officers told § 87(2)(b) that they had just told him not to reenter McDonald's and he did, and again ordered him to produce his identification. § 87(2)(b) refused again because he was not "banned from McDonald's," and did not understand why he had to give his identification to the officers for going into a restaurant. § 87(2)(b) called his mother, § 87(2)(b) § 87(2)(b), told her what was happening, and § 87(2)(b) told him to walk away since neither officer had told § 87(2)(b) he was under arrest.

In a subsequent phone conversation on January 17, 2019, § 87(2)(b) stated that the officers approached him when he was by the side door of the McDonald's trying to complete his order. He was halfway in and halfway outside the McDonald's, talking with his friends and confirming the order at the same time. § 87(2)(b) never actually completed his order. Since he

never confirmed the order, he did not have a receipt. § 87(2)(b) initially stated that he told the officers he was going to buy food, but later changed his statement and said that when the officers approached him, they immediately asked for his ID, and he then questioned why he had to provide it. (Board Review 28)

§ 87(2)(b), § 87(2)(a) Fam. Ct. Act § 381.3

PO Bongiorno further reported that the officers asked § 87(2)(b) for his identification multiple times and he refused, and was charged with § 87(2)(b), § 87(2)(a) Fam. Ct. Act § 381.3

PO Bongiorno stated that on February 14, 2018, at approximately 4:30 p.m., he and his partner, PO Ragonese, went into the McDonald's at 159-01 Jamaica Avenue to conduct their routine patrol, given the large number of high school students that frequent the restaurant after school (BR03). PO Bongiorno explained that he goes into that McDonald's every day and tells high school kids that if they are not going to buy anything they must leave. On the date of the incident, PO Bongiorno said that one group of kids, which included § 87(2)(b) refused to leave the restaurant, and thought he had told them to leave three times.

PO Bongiorno approached § 87(2)(b) after observing him sit on a tabletop where an individual was eating their food, and told him again that he needed to leave. § 87(2)(b) said he wanted to buy food, but PO Bongiorno told him he had his chance and now he needed to leave. PO Bongiorno escorted § 87(2)(b) from the McDonald's. Approximately 10 minutes later, PO Bongiorno said he reentered the restaurant from the rear entrance and observed § 87(2)(b) inside McDonald's standing in the vestibule.

PO Bongiorno escorted § 87(2)(b) outside for the second time and ordered him to produce his identification in order to write him a summons for trespassing. § 87(2)(b) refused and began talking on his cell phone and repeatedly ignored PO Bongiorno's orders to produce his identification. PO Bongiorno called for additional units over the radio due to the large number of high school kids at the McDonald's, and his concern that there was going to be "a commotion."

§ 87(2)(g)

PO Ragonese stated that the McDonald's in question has an agreement with the NYPD to assist in enforcing the restaurant's rules, namely, to remove patrons who remain in the McDonald's without purchasing food (BR04). PO Ragonese first observed § 87(2)(b) and his group of friends sitting on tables and charging their cell phones. Since § 87(2)(b) and his friends were not purchasing food and taking up numerous tables, she and PO Bongiorno asked them to leave. § 87(2)(b) and his friends initially left, but returned a few minutes after, which, PO Ragonese stated, occurred a couple of times. PO Ragonese stated that she asked § 87(2)(b) and his friends to leave multiple times, and she and PO Bongiorno escorted the group out twice. The officers left McDonald's for a few minutes, and when they returned, § 87(2)(b) and his friend were back inside.

The officers approached § 87(2)(b) and ordered him to leave. § 87(2)(b) told PO Ragonese that he did not want to leave and was going to purchase some food. PO Ragonese told him to either get in line or leave, and § 87(2)(b) walked over and sat on a table top where an individual was eating, and "almost sat on his food." The officers told § 87(2)(b) that was his last chance and escorted him outside. PO Ragonese said that she and PO Bongiorno never physically removed § 87(2)(b) but did so with verbal commands. PO Ragonese was consistent

with her partner that § 87(2)(b) refused to provide his identification multiple times, and added that he also refused to provide his name to the officers.

On January 16, 2019, the CCRB spoke with § 87(2)(b), the manager of the McDonald's located at 159-01 Jamaica Avenue in Queens. § 87(2)(b) confirmed that there is an agreement between the McDonald's and the NYPD, wherein generally, a person has 30 minutes to sit in the McDonalds while eating, and if they "look decent," they will be given a 10 to 15-minute grace period after that as part of McDonald's loitering policy. If they do not leave by that point, they will be asked by McDonald's staff to leave. If they refuse, a security guard from a private company that is posted inside the restaurant will ask the person to leave. If the person being asked to leave still does not leave or becomes loud or disorderly, the police will be called.

There are signs posted in the McDonald's stating that there is no loitering permitted and there is a 30-minute limit while consuming food. § 87(2)(b) described the McDonald's loitering policy as necessary "to keep bad people" and homeless individuals, and noted that there are many incidents that occur within the restaurant (Board Reviews 26 and 27). The CCRB was unable to speak with any McDonald's employees who were working on the date of the incident.

A person who, regardless of intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless they defy a lawful order not to enter or remain, personally communicated to them by the owner of such premises or other authorized person New York State Penal Law, Article 140.00 (BR05). A person is guilty of trespass when they knowingly enter or remain unlawfully in or upon a premises. New York State Penal Law, Article 140.05 (BR05).

It is undisputed that PO Ragonese and PO Bongiorno ordered § 87(2)(b) to leave the McDonald's after he remained inside without buying food, and that soon after he reentered.

§ 87(2)(g)

[REDACTED]

Allegation C—Force: Police Officer Joseph Bongiorno used physical force against § 87(2)(b)

Allegation D—Force: Police Officer Jill Ragonese used physical force against § 87(2)(b)

Allegation E—Force: Officers used physical force against § 87(2)(b)

After § 87(2)(b) told him over the phone to walk away if neither officer informed him he was under arrest, § 87(2)(b) attempted to walk away but PO Bongiorno grabbed his hand (BR01). § 87(2)(b) stopped, removed his back pack to retrieve his identification, however, PO Bongiorno "snatched" his cell phone from his hand, and once he had removed his identification, PO Bongiorno "snatched" that as well. § 87(2)(b) asked for his phone back and PO Bongiorno replied no.

Approximately six to eight additional officers arrived, assisted turning § 87(2)(b) around to face the McDonald's, and handcuffed him. Once handcuffed, the group of officers forcibly brought § 87(2)(b) to the ground. § 87(2)(b) denied that he resisted being handcuffed or being brought to the ground, and did not hear any officer order him to stop resisting. On the ground, § 87(2)(b) felt a few officers put their knees into and sitting on his back. § 87(2)(b) could not describe which officers put their knees into and sat on his back as he was on the ground and could not see. After a few minutes the officers lifted § 87(2)(b) to his feet and transported him to the 103rd Precinct stationhouse.

The CCRB obtained BWC footage from nine of the officers who responded (BR09-BR17). PO Bongiorno's and PO Alexander's BWCs captured the relevant portion of the incident, wherein officers brought § 87(2)(b) to the ground.

PO Bongiorno's BWC footage (BR18) begins in silence, and shows § 87(2)(b) looking at and talking on his cell phone, while reaching into his front sweatshirt pocket and then his backpack. The audio begins at the 30-second mark, showing § 87(2)(b) hand his identification to PO Bongiorno, who says "thanks," and asks for his backpack. § 87(2)(b) repeatedly asks, "For what?" as multiple officers hands are seen reaching for his backpack. The frame is then obscured, as officers are heard telling § 87(2)(b) to put his hands behind his back. PO Bongiorno's hands are seen holding handcuffs, as § 87(2)(b) is briefly seen pulling his hands away from officers. The frame is obscured again by PO Bongiorno's jacket, as officers are heard saying "Put him down!" and repeatedly ordering § 87(2)(b) to put his hands behind his back. With the frame still obscured, an officer's voice is heard saying "Relax, my man," and "Easy, easy, easy." The frame becomes unobscured and shows PO Bongiorno handcuffing § 87(2)(b) who is laying chest-first on the ground.



201801285_20180928_1605_DM.mp4

PO Alexander's BWC footage (BR19) begins with sound and she is heard telling the large crowd of kids to step back. § 87(2)(b) is seen surrounded by five uniformed male officers. PO Bongiorno is attempting to hold onto § 87(2)(b)'s arm and § 87(2)(b) pulls it away. The group of officers are seen pulling § 87(2)(b) gradually to the ground, while multiple officers are heard shouting, "Put your hands behind your back!" PO Alexander's BWC turns toward the large crowd of high school kids, and when it returns to § 87(2)(b) the group of officers are seen bending low toward the ground. § 87(2)(b) is then seen laying supine on his chest. PO Alexander and PO Bongiorno lift § 87(2)(b) to his feet by his arms.



201801285_20180928_1607_DM.mp4

In a later section of PO Bongiorno's BWC footage (BR20), PO Bongiorno is seen in the driver seat of an RMP, and tells PO Ragonesi that he turned his camera on when she called the 10-85. PO Bongiorno says that he did not think he was going to arrest anyone that day, and PO Ragonesi says that she "didn't press it on." After a slight pause, PO Ragonesi says, "I just like karate-chopped his forearm." PO Bongiorno replies, "I'm still on." PO Ragonesi says what, and PO Bongiorno repeats that he is still on, in reference to his BWC. After another slight pause, PO Ragonesi says that she forgot to turn hers on, in reference to her BWC.



201801285_20180928_1607A_DM.mp4

PO Bongiorno stated that after § 87(2)(b) ended the call with his mother, he still refused to provide his identification, which he described as being “OGA,” (i.e. Obstructing Governmental Administration) (BR03). Once the additional units arrived, § 87(2)(b) gave his identification to PO Bongiorno, who told § 87(2)(b) he was being placed under arrest. PO Bongiorno and the additional officers ordered him to put his hands behind his back, however, § 87(2)(b) refused by stiffing his arms in a straight position and locking his elbows. PO Bongiorno and three or four other officers grabbed § 87(2)(b) by his arms and brought him to the ground in a gradual motion, to overcome his resistance. On the ground, PO Bongiorno successfully handcuffed § 87(2)(b). PO Bongiorno denied that any officer used any additional force besides pulling § 87(2)(b) to the ground, and did not recall any officer sitting or placing their knee into § 87(2)(b)'s back. PO Bongiorno denied that § 87(2)(b) ever complained of any pain or injury after his arrest. PO Bongiorno had called for additional units to respond over the radio as there were a large number of students at the restaurant and PO Bongiorno was concerned there was going to be a commotion.

§ 87(2)(g)
PO Ragonesi said the additional units arrived a few minutes after she and her partner had radioed, and assisted in restraining § 87(2)(b) (BR04). PO Ragonesi ordered § 87(2)(b) to remove his back pack multiple times in order to handcuff him, but he flailed his arms, tried to pull away from the officers, and refused to put his hands behind his back. PO Bongiorno and the additional units gradually brought § 87(2)(b) to the ground in order to overcome his resistance, gain control of his movements, and handcuff him. PO Ragonesi denied that any officer threw § 87(2)(b) to the ground, and denied that any additional force was employed against § 87(2)(b) to effect his arrest. After being shown PO Bongiorno's BWC footage, specifically the latter section when she tells her partner that she “karate-chopped § 87(2)(b)'s] forearm,” PO Ragonesi denied that she actually “karate-chopped” § 87(2)(b)'s arm or struck him. PO Ragonesi explained that she did put her body weight against § 87(2)(b) and forced his arm downward with her hands in order to slide his back pack off and effect his arrest.

Officers may use force when it is reasonable to ensure the safety of a member of service, third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Officers will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situation where this is not safe and/or appropriate, officers will use only the reasonable force necessary to gain control or custody of a subject. Patrol Guide, Procedure 221-01 (BR21).

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint that § 87(2)(b) has been party to.
- PO Bongiorno, a four-year-member-of-service, has had one prior CCRB complaint filed against him, with a total of three allegations, none of which were substantiated (see Officer History). § 87(2)(g)
- PO Ragonesi, a four-year-member-of-service, has had three prior CCRB complaints filed against her, with a total of nine allegations, none of which were substantiated (see Officer History). § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of June 5, 2018, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the NYC Comptroller's Office regarding this incident (BR24).
- § 87(2)(b) has not been criminally convicted in New York City (BR 25).

Squad No.: 7

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date